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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 24 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Eligibility for the Specialized )  
Mobile Radio Services and Radio )  
Services in the 220-222MHz Land )  
Mobile Band and Use of Radio )  
Dispatch Communications )

GN Docket No. 94-90

DOCKET FILE COPY ORIGINAL

OPPOSITION OF SPRINT CORPORATION  
TO REQUEST FOR PARTIAL RECONSIDERATION AND  
FOR CLARIFICATION OF THE AMERICAN MOBILE  
TELECOMMUNICATIONS ASSOCIATION, INC.

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Company L.P., and Sprint Cellular, respectfully files this Opposition to American Mobile Telecommunications Association, Inc.'s ("AMTA") April 24, 1995 Request for Partial Reconsideration and for Clarification ("PFR") of the Commission's R&O in the above referenced docket.<sup>1</sup>

In the R&O, the Commission eliminated the prohibition against the LEC ownership of SMR and commercial 220 MHz licenses. The Commission also eliminated the prohibition on the provision of dispatch service by providers of Commercial Mobile Radio Service ("CMRS"). It is this latter provision of the R&O to which AMTA objects. AMTA argues that elimination of the dispatch prohibition is not necessary to achieve regulatory parity and

1. Report and Order, FCC 95-98, released March 7, 1995 ("R&O").

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that, at the very least, the Commission should delay elimination of the prohibition until the end of the transition period specified in the Budget Act.<sup>2</sup> AMTA also introduces a new argument and suggests that the Commission, rather than eliminate the ban on the common carrier provision of dispatch, the Commission should recover unused spectrum from cellular providers and reassign it through competitive bidding.

AMTA's arguments against eliminating the ban are not new. The arguments were raised and thoroughly debated in the Comment and Reply rounds, and were rejected by the Commission in the R&O. AMTA provides no new information or arguments that suggest the Commission's decision was wrong.

In arguing that elimination of the dispatch prohibition is not necessary to achieve regulatory parity, AMTA attempts to make much of the Budget Act's different treatment of the prohibition against LEC ownership of SMR licenses and the prohibition of common carrier provision of dispatch service:

The Commission was encouraged to re-evaluate the prohibition against wireline ownership of SMR systems in light of the changed regulatory environment. By contrast, Congress retained the statutory ban against common carrier provision of dispatch service, but authorized the Commission to repeal it by regulation in whole or in part.<sup>3</sup>

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2. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 ("Budget Act") at Section 6002(d)(d). The transition period defers the reclassification of certain private mobile radio service providers to CMRS status until August 10, 1996.

3. PFR at p. 2.

AMTA's claimed distinction ignores the plain language of the Budget Act and the Legislative History. Revised Section 332(c)(2) states, in pertinent part:

A common carrier . . . shall not provide any dispatch service on any frequency allocated for common carrier service. . . . The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

In explaining this section, Congress stated:

In addition, this section authorizes the FCC to decide as part of its rulemaking pursuant to section 332(c) whether all common carriers should be able to provide dispatch service.<sup>4</sup>

Thus, as Sprint pointed out in its Reply Comments in this proceeding, the Commission was not merely given permission to review the dispatch ban; Congress specifically directed the Commission to decide whether the ban should be eliminated. The Commission has so decided.

AMTA argues that at the very least the Commission must delay the elimination of the prohibition on common carrier provision of dispatch until the end of the transition period. AMTA claims that such a delay will shield private carriers from additional competition and that - somehow - this shield will actually promote regulatory symmetry and robust competition.<sup>5</sup>

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4. House Report, 1993 WL 181528 (Leg. Hist.) at p. 548 of 1854.

5. PFR at pp. 6-7.

AMTA's argument is disingenuous. Cellular, PCS and other CMRS providers not previously classified as private face competition today from other CMRS providers. Thus, AMTA's claim for postponing competition in dispatch is not an argument for regulatory symmetry, but rather for regulatory consistency in accord with the existing dispatch providers ability to avoid competition, i.e. regulatory asymmetry.

Finally, AMTA's suggestion that the Commission, rather than eliminate the prohibition on common carrier provision of dispatch, should recover unused cellular spectrum and auction it off must be rejected out of hand. The suggestion is clearly beyond the scope of this proceeding as announced in the NPRM and therefore cannot be considered.<sup>6</sup>

Additionally, AMTA's argument, even if it was relevant to this proceeding, is unworkable. It ignores the fact that most cellular providers are using and reusing all their available channels.

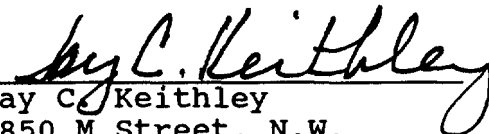
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6. In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, Notice of Proposed Rule Making, FCC 94-202, released August 11, 1994.

For the reasons set for above, Sprint urges the Commission  
to deny AMTA's PFR.

Respectfully submitted,

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May 24, 1995

## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 24th day of May, 1995, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Opposition of Sprint Corporation to Request for Partial Reconsideration and for Clarification of the American Mobile Telecommunications Association, Inc." in the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

  
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